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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 320

JERROLD ORLAND CONAWAY
and LOUIS J. RITACCO

Petitioners

vs.

STATE OF MINNESOTA

Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT, STATE OF MINNESOTA

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR CERTIORARI

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CITATIONS TO OPINIONS BELOW

The matter is correctly stated in the Petition.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTION PRESENTED

Whether, after Petitioners' return to Minnesota from Pennsylvania under extradition warrants, an alleged irregularity in a supporting paper to the extradition warrants will permit a collateral attack on the power of the trial court in Minnesota to compel Petitioners to stand trial for the crime for which they were returned.

STATUTES INVOLVED

The pertinent statutes are Purdon's Pennsylvania Statutes Annotated, Section 131.03, set forth in Petitioners' Appendix at pages 2 and 3, and Minnesota Statutes, 1961, Section 629.42, set forth in Petitioners' Appendix at pages 3 and 4.

STATEMENT

Petitioners are accused of stealing a coin collection valued at $60,000 from a home in Minneapolis, Minnesota, in November, 1962. (App. 12-14, 15). As yet, there has been no trial. In connection with this charge, the Governor of Minnesota issued a requisition warrant for Petitioners' extradition from Pennsylvania, where they were then, and the Governor of Pennsylvania honored this request on December 28, 1962, when he issued a rendition warrant. (App. 11-12). On January 3, 1963, arrest under the rendition warrant occurred in Harrisburg, Pennsylvania (App. 5). While held under the extradition war-

rant. Petitioners challenged the extradition papers by filing a petition in habeas corpus and got a hearing on the matter on January 24. On January 25, the hearing judge ruled that Petitioners' attack was not well grounded, and ordered their return to Minnesota (App. 5). Petitioners' counsel requested no stay to appeal the hearing court's order, and two days later, on January 27, officers from Minnesota took Petitioners into custody and started their return to Minnesota. (App. 5). On the first day of Petitioners' return to Minneapolis, Minnesota, on January 29, they again challenged the extradition papers, this time by Motion in the Minneapolis Municipal Court. (App. 7). Against the Petitioners' attack that the Municipal Court lacked jurisdiction because an affidavit contained in extradition papers was illegal, the court found against them. (App. 7). On February 20, following a hearing to determine whether probable cause existed for believing that Petitioners committed the coin theft occurring in November, 1962, the court ordered Petitioners bound over to Hennepin County District Court to stand trial for the crime. (App. 7). In District Court, Petitioners again challenged the Court's jurisdiction by again claiming that the extradition papers denied them constitutional rights because a supporting affidavit in the extradition papers was based on information and belief. (App. 7-8). The District Court decided that no constitutional right of the petitioners had been violated and denied their motion on March 28, 1963. (App. 8).

On April 9, Petitioners filed a petition for a writ of prohibition with the Supreme Court of Minnesota asserting that the District Court lacked jurisdiction for the same reason that they had alleged in the District Court below. (App. 4-9). The Supreme Court of Minnesota heard oral arguments on the case on April 18, 1963. (App. 16). Following the receipt of briefs

and the hearing, the Minnesota Supreme Court, on May 1, 1963, concluded that Petitioners' constitutional rights had not been violated, and refused to issue the requested writ of prohibition. (App. 17).

ARGUMENT

Petitioners apparently contend that their arrest in Pennsylvania under extradition warrants were unlawful—not because the extradition warrants were improperly issued under Purdon's Pennsylvania Statutes Annotated, Section 191.03 (App. 2-3), nor because the supporting criminal complaint (App. 12-14) did not comply with Minnesota Statutes, Section 629.42 (App. 3-4), but because, even so, probable cause for the arrests was somehow lacking (Pet. 6). These illegal arrests in Pennsylvania, they assert, forever deprive the trial court in Minnesota of jurisdiction to try them for the crime for which they were returned (Pet. 5).

Outside the bare assertion that the criminal complaint (App. 12-14) did not establish probable cause because it was based on information and belief (Pet. 6), nothing in the case justifies this conclusion. Four courts below have specifically rejected this assertion: (1) Court of Common Pleas, Dauphin County, Pennsylvania; (2) Municipal Court, Minneapolis, Minnesota; (3) District Court, Hennepin County, Minnesota; and (4) Supreme Court, State of Minnesota. Moreover, no complaint and warrant could have been issued in Minnesota unless a judge first determined that probable cause, in fact, existed. Minnesota Statutes, Section 629.42 (App. 3-4), requires that a magistrate must examine the complainant and any witnesses under oath first and then, "if it shall appear that such offense

has been committed, he shall issue a warrant . . . requiring the officer to whom it is directed to forthwith bring the accused before him . . ." This was done here. No suggestion exists that such an examination and determination were not made. Petitioners simply assert, without more, that their arrest in Pennsylvania was not based on probable cause because the extradition warrant was supported by the criminal complaint issued in Minnesota. Petitioners do not suggest that this complaint otherwise fails to qualify as an affidavit in extradition under Purdon's Pennsylvania Statutes Annotated, Section 191.03 (App. 2-3). They seek instead to link it with the "Affidavit as to Facts and Circumstances" (App. 14-15), which admittedly is based upon information and belief, and treat them as one. (Pet. 6). That affidavit's sole function was to place a more explicit value, i.e., $60,000, upon the stolen coins than the complaint had previously done.

From the bare assertion that the criminal complaint did not establish probable cause because based on information and belief, Petitioners next ask that this Court overturn its previous decision in *Frisbie v. Collins*, 342 U.S. 519. (Pet. 6). The policy there announced was:

> "This Court has never departed from the rule announced in *Ker v. Illinois*, 119 U.S. 436, 444, that the power of a court to try a person for crime is not impaired by the fact that he had been brought within the court's jurisdiction by reason of a 'forcible abduction.' No persuasive reasons are now presented to justify overruling this line of cases. They rest on the sound basis that due process of law is satisfied when one present in court is convicted of crime after having been fairly apprised of the charges against him and a fair trial in accordance with constitutional procedural safeguards. There is nothing in the Constitu-

tion that requires a court to permit a guilty person rightfully convicted to escape justice because he was brought to trial against his will." *Id.* at 522.

It is clear, then, that without the strained semantics used by the Petitioners to convert an arrest under an extradition warrant into a constitutional violation, no important question of Federal law requiring decision by this Court exists.

CONCLUSION

For the foregoing reasons we respectfully submit that the petition for a writ of certiorari should be denied.

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